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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

11 MICHELLE KENDIG and JIM KENDIG,
12 individually and on behalf of all similarly
situated current and former employees,

13 Plaintiffs,

14 v.

15 EXXONMOBIL OIL CORP.;
16 EXXONMOBIL PIPELINE COMPANY;
17 PBF ENERGY LIMITED; TORRANCE
REFINING COMPANY, LLC; and DOES 1
through 10, inclusive,

18 Defendants.

Case No. 18-cv-09224 MWF (SSx)

CLASS ACTION

STIPULATED PROTECTIVE ORDER

**[DISCOVERY DOCUMENT: REFERRED
TO MAGISTRATE JUDGE SUZANNE H.
SEGAL]**

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1 Plaintiffs MICHELLE KENDIG and JIM KENDIG (“Plaintiffs”) and Defendants
2 EXXONMOBIL OIL CORP., EXXONMOBIL PIPELINE COMPANY, PBF ENERGY
3 LIMITED, and TORRANCE REFINING COMPANY, LLC (individually and collectively
4 “Defendants”, and with Plaintiffs, the “Parties”), by and through their respective counsel,
5 represent, stipulate, and respectfully request that this Court order, as follows:

6 1. A. PURPOSES AND LIMITATIONS

7 Disclosure and discovery activity in this action are likely to involve production of
8 confidential, proprietary, or private information for which special protection from public
9 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.
10 Accordingly, the parties hereby stipulate to and petition the Court to enter the following
11 Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket
12 protections on all disclosures or responses to discovery and that the protection it affords from
13 public disclosure and use extends only to the limited information or items that are entitled to
14 confidential treatment under the applicable legal principles. The parties further acknowledge, as
15 set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file
16 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be
17 followed and the standards that will be applied when a party seeks permission from the Court to
18 file material under seal.

19 B. GOOD CAUSE STATEMENT

20 This action is likely to involve personnel records, payroll information, and other materials
21 comprising confidential business or financial information and/or information which is generally
22 unavailable to the public, or which may be privileged or otherwise protected from disclosure
23 under state or federal statutes, court rules, case decisions, or common law. Accordingly, to
24 expedite the flow of information, to facilitate the prompt resolution of disputes over
25 confidentiality of discovery materials, to adequately protect information the parties re entitled to
26 keep confidential, to ensure that the parties are permitted reasonably necessary uses of such
27 material in preparation for and in the conduct of trial, to address their handling at the end of the
28 litigation, and to serve the ends of justice, a protective order for such information is justified in

1 this matter. It is the intent of the Parties that information will not be designated as confidential for
2 tactical reasons and that nothing be so designated without a good faith belief that it has been
3 maintained in a confidential, non-public manner, and that there is good cause why it should not
4 be part of the public record in this case.

5 **2. DEFINITIONS**

6 2.1 **Challenging Party:** a Party or Non-Party that challenges the designation of
7 information or items under this Order.

8 2.2 **“CONFIDENTIAL” Information or Items:** information (regardless of how it is
9 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
10 of Civil Procedure 26(c).

11 2.3 **Counsel (without qualifier):** Outside Counsel of Record and House Counsel (as
12 well as their support staff).

13 2.4 **Designating Party:** a Party or Non-Party that designates information or items that
14 it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

15 2.5 **Disclosure or Discovery Material:** all items or information, regardless of the
16 medium or manner in which it is generated, stored, or maintained (including, among other things,
17 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
18 responses to discovery in this matter.

19 2.6 **Expert:** a person with specialized knowledge or experience in a matter pertinent
20 to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as
21 a consultant in this action.

22 2.7 **House Counsel:** attorneys who are employees of a party to this action. House
23 Counsel does not include Outside Counsel of Record or any other outside counsel.

24 2.8 **Non-Party:** any natural person, partnership, corporation, association, or other
25 legal entity not named as a Party to this action.

26 2.9 **Outside Counsel of Record:** attorneys who are not employees of a party to this
27 action but are retained to represent or advise a party to this action and have appeared in this
28 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of

1 that party.

2 2.10 Party: any party to this action, including all of its officers, directors, employees,
3 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

4 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
5 Material in this action.

6 2.12 Professional Vendors: persons or entities that provide litigation support services
7 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
8 organizing, storing, or retrieving data in any form or medium) and their employees and
9 subcontractors.

10 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
11 “CONFIDENTIAL.”

12 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a
13 Producing Party.

14 3. SCOPE

15 The protections conferred by this Stipulation and Order cover not only Protected Material
16 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)
17 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
18 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

19 However, the protections conferred by this Stipulation and Order do not cover the
20 following information: (a) any information that is in the public domain at the time of disclosure
21 to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving
22 Party as a result of publication not involving a violation of this Order, including becoming part of
23 the public record through trial or otherwise; and (b) any information known to the Receiving
24 Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source
25 who obtained the information lawfully and under no obligation of confidentiality to the
26 Designating Party.

27 Any use of Protected Material at trial shall be governed by orders of the trial judge. This
28 Order does not govern the use of Protected Material at trial.

1 4. DURATION

2 Even after final disposition of this litigation, the confidentiality obligations imposed by
3 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
4 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all
5 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after
6 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this
7 action, including the time limits for filing any motions or applications for extension of time
8 pursuant to applicable law.

9 5. DESIGNATING PROTECTED MATERIAL

10 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
11 or Non-Party that designates information or items for protection under this Order must take care
12 to limit any such designation to specific material that qualifies under the appropriate standards.
13 The Designating Party must designate for protection only those parts of material, documents,
14 items, or oral or written communications that qualify – so that other portions of the material,
15 documents, items, or communications for which protection is not warranted are not swept
16 unjustifiably within the ambit of this Order.

17 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
18 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
19 unnecessarily encumber or retard the case development process or to impose unnecessary
20 expenses and burdens on other parties) expose the Designating Party to sanctions.

21 If it comes to a Designating Party's attention that information or items that it designated
22 for protection do not qualify for protection, the Designating Party must promptly notify all other
23 Parties that it is withdrawing the mistaken designation.

24 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
25 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
26 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
27 designated before the material is disclosed or produced.

28 Designation in conformity with this Order requires:

(a) for information in documentary form (e.g., paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend “CONFIDENTIAL” to each page that contains protected material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

A Party or Non-Party that makes original documents or materials available for inspection need not designate them for protection until after the inspecting Party has indicated which material it would like copied and produced. During the inspection and before the designation, all of the material made available for inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order. Then, before producing the specified documents, the Producing Party must affix the “CONFIDENTIAL” legend to each page that contains Protected Material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

(b) for testimony given in deposition or in other pretrial or trial proceedings, that the Designating Party identify on the record, before the close of the deposition, hearing, or other proceeding, all protected testimony.

(c) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party's right to secure protection under this Order for such material. Upon timely correction of a

1 designation, the Receiving Party must make reasonable efforts to assure that the material is
2 treated in accordance with the provisions of this Order.

3 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

4 **6.1 Timing of Challenges.** Any Party or Non-Party may challenge a designation of
5 confidentiality at any time that is consistent with the Court's Scheduling Order. Unless a prompt
6 challenge to a Designating Party's confidentiality designation is necessary to avoid foreseeable,
7 substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the
8 litigation, a Party does not waive its right to challenge a confidentiality designation by electing
9 not to mount a challenge promptly after the original designation is disclosed.

10 **6.2 Meet and Confer.** The Challenging Party shall initiate the dispute resolution
11 process in accordance with Civil Local Rules 37-1 through 37-4.

12 **6.3 Judicial Intervention.** If the Parties cannot resolve a challenge without court
13 intervention, the Designating Party shall draft and cause to be filed the joint stipulation required
14 by Civil Local Rule 37-2.1 and 37-2.2, and the parties may thereafter file supplemental briefs in
15 accordance with Civil Local Rule 37-2.3.

16 The burden of persuasion in any such challenge proceeding shall be on the Designating
17 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose
18 unnecessary expenses and burdens on other parties) may expose the Challenging Party to
19 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to
20 file a motion to retain confidentiality as described above, all parties shall continue to afford the
21 material in question the level of protection to which it is entitled under the Producing Party's
22 designation until the Court rules on the challenge.

23 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

24 **7.1 Basic Principles.** A Receiving Party may use Protected Material that is disclosed
25 or produced by another Party or by a Non-Party in connection with this case only for prosecuting,
26 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
27 the categories of persons and under the conditions described in this Order. When the litigation
28 has been terminated, a Receiving Party must comply with the provisions of section 13 below

1 (FINAL DISPOSITION).

2 Protected Material must be stored and maintained by a Receiving Party at a location and
3 in a secure manner that ensures that access is limited to the persons authorized under this Order.

4 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
5 by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose
6 any information or item designated “CONFIDENTIAL” only to:

7 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
8 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
9 information for this litigation and who have signed the “Acknowledgment and Agreement to Be
10 Bound” that is attached hereto as Exhibit A;

11 (b) the officers, directors, and employees (including House Counsel) of the
12 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have
13 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

14 (c) Experts (as defined in this Order) of the Receiving Party to whom
15 disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment
16 and Agreement to Be Bound” (Exhibit A);

17 (d) the Court and its personnel;

18 (e) court reporters and their staff;

19 (f) professional jury or trial consultants, mock jurors, and Professional
20 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the
21 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

22 (g) the author or recipient of a document containing the information or a
23 custodian or other person who otherwise possessed or knew the information;

24 (h) during their depositions, witnesses, and attorneys for witnesses, in the
25 action to whom disclosure is reasonably necessary, provided: (1) the deposing Party requires that
26 the witness (and if applicable, his or her counsel) sign the “Acknowledgment and Agreement to
27 Be Bound” (Exhibit A); and (2) the witness (and if applicable, his or her counsel) will not be
28 permitted to keep any Protected Material unless otherwise agreed by the Designating Party or

ordered by the Court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

(i) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the Parties engaged in settlement discussions.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL,” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-

1 Party in this action and designated as “CONFIDENTIAL.” Such information produced by Non-
2 Parties in connection with this litigation is protected by the remedies and relief provided by this
3 Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking
4 additional protections.

5 (b) In the event that a Party is required, by a valid discovery request, to
6 produce a Non-Party’s confidential information in its possession, and the Party is subject to an
7 agreement with the Non-Party not to produce the Non-Party’s confidential information, then the
8 Party shall:

9 (1) promptly notify in writing the Requesting Party and the Non-Party
10 that some or all of the information requested is subject to a confidentiality agreement with a Non-
11 Party;

12 (2) promptly provide the Non-Party with a copy of the Stipulated
13 Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific
14 description of the information requested; and

15 (3) make the information requested available for inspection by the
16 Non-Party.

17 (c) If the Non-Party fails to object or seek a protective order from this Court
18 within 14 days of receiving the notice and accompanying information, the Receiving Party may
19 produce the Non-Party’s confidential information responsive to the discovery request. If the Non-
20 Party timely seeks a protective order, the Receiving Party shall not produce any information in its
21 possession or control that is subject to the confidentiality agreement with the Non-Party before a
22 determination by the Court. Absent a court order to the contrary, the Non-Party shall bear the
23 burden and expense of seeking protection in this Court of its Protected Material.

24 10. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

25 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
26 Material to any person or in any circumstance not authorized under this Stipulated Protective
27 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
28 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the

Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

11. **INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL**

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the Court.

12. **MISCELLANEOUS**

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

12.3 Filing Protected Material. Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rules 79-5, 79-6, and 79-7.¹ Protected Material

¹ See Guide to Electronically Filing Under-Seal Documents in Civil Cases, available at <http://www.cacd.uscourts.gov/sites/default/files/documents/Guide%20to%20Efilng%20Sealed%20Documents.pdf>

1 may only be filed under seal pursuant to a court order authorizing the sealing of the specific
2 Protected Material at issue. Pursuant to Civil Local Rule 79-5.2.2, a sealing order will issue only
3 upon a request establishing that the Protected Material at issue is privileged, protectable as a trade
4 secret, or otherwise entitled to protection under the law. If a Party's request to file Protected
5 Material under seal pursuant to Civil Local Rule 79-5.2.2 is denied by the Court, then the
6 Receiving Party may file the information in the public record unless otherwise instructed by the
7 Court.

8 13. **FINAL DISPOSITION**

9 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
10 Receiving Party must return all Protected Material to the Producing Party or destroy such
11 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,
12 compilations, summaries, and any other format reproducing or capturing any of the Protected
13 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must
14 submit a written certification to the Producing Party (and, if not the same person or entity, to the
15 Designating Party) by the 60 day deadline that: (1) identifies (by category, where appropriate) all
16 the Protected Material that was returned or destroyed; and (2) affirms that the Receiving Party
17 has not retained any copies, abstracts, compilations, summaries or any other format reproducing
18 or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled
19 to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
20 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports,
21 attorney work product, and consultant and expert work product, even if such materials contain
22 Protected Material. Any such archival copies that contain or constitute Protected Material remain
23 subject to this Protective Order as set forth in Section 4 (DURATION).

24 14. Any violation of this Order may be punished by any and all appropriate measures
25 including, without limitation, contempt proceedings and/or monetary sanctions.

26
27 [20Docs.pdf](#), and Overview of Filing Documents Under Seal in a Non-Sealed Civil Case,
28 available at <http://www.cacd.uscourts.gov/sites/default/files/documents/LR%2079-5%20Overview.pdf>.

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 Dated: April 24, 2019.

HADSELL STORMER & RENICK, LLP

3 By: /s/ Randy Renick

4 Randy Renick

5 Attorneys for Plaintiffs

6 MICHELLE KENDIG and JIM KENDIG

7 By: /s/ Gary T. Lafayette

8 Gary T. Lafayette

9 Dated: April 24, 2019.

LAFAYETTE & KUMAGAI LLP

10 By: /s/ Gary T. Lafayette

11 Gary T. Lafayette

12 Attorneys for Defendants

13 PBF ENERGY LIMITED and

14 TORRANCE REFINING COMPANY LLC

15 Dated: April 24, 2019.

16 STRADLING YOCCA CARLSON
17 & RAUTH, P.C.

18 By: /s/ Jeffrey A. Dinkin

19 Jeffrey A. Dinkin

20 Attorneys for Defendants

21 EXXONMOBIL OIL CORP. and

22 EXXONMOBIL PIPELINE COMPANY

23 By: /s/ Gary T. Lafayette

24 Gary T. Lafayette

25 ATTESTATION

26 I, Gary T. Lafayette, attest that I have obtained the concurrence of Joshua F. Young,
27 counsel for Plaintiffs, and Jeffrey A. Dinkin, counsel for Defendants ExxonMobil Oil Corp. and
28 ExxonMobil Pipeline Company, for the filing of this Stipulated Protective Order.

I declare under penalty of perjury under the laws of the United States of America that the
foregoing is true and correct.

Executed this 23rd day of April, 2019, in San Francisco, California.

25 By: /s/ Gary T. Lafayette

26 Gary T. Lafayette

ORDER

Pursuant to the Parties' stipulation, and good cause appearing therefor,

IT IS SO ORDERED.

Dated: 4/24/19

/S/

UNITED STATES MAGISTRATE JUDGE
SUZANNE H. SEGAL

LAFAYETTE & KUMAGAI
LLP
ATTORNEYS AT LAW
1300 CLAY STREET, SUITE 810

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on [date] in the case of ***MICHELLE KENDIG and JIM KENDIG, individually and on behalf of all similarly situated current and former employees, Plaintiffs, v. EXXONMOBIL OIL CORP.; EXXONMOBIL PIPELINE COMPANY; PBF ENERGY LIMITED; TORRANCE REFINING COMPANY, LLC; and DOES 1 through 10, inclusive, Defendants***, Case No. 18-cv-09224 MWF (SSx). I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and telephone number]
as my California agent for service of process in connection with this action or any proceedings
related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name:

Signature: _____